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Supreme Court, U.S.
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No. 92-2042

IN THE
Supreme Court of the United States
OCTOBER TERM, 1993

CAROL ROBINSON,
Petitioner,
v.
CENTRAL BRASS MANUFACTURING and INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS, LOCAL 1196,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

UAW RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION PRESENTED

When an employee pursues internal union appeal mechanisms based on a mistaken belief that such pursuit is required prior to filing a "hybrid" contract enforcement/duty of fair representation action, does the resulting equitable tolling of the statute of limitations with respect to the duty of fair representation component of that action require similar tolling with respect to the contract enforcement component of that action?

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COUNTER-STATEMENT OF FACTS

At all relevant times, Petitioner Carol Robinson was employed at Central Brass Manufacturing (the "Employer") and represented for purposes of collecitve bargaining by the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America and its Local 1196 (the "UAW"). Following Petitioner's discharge, the UAW pursued a grievance through various steps mandated by the collective bargaining agreement. At that juncture, the UAW informed Petitioner that the bargaining committee of Local 1196 had decided not to pursue the grievance to arbitration.

Petitioner sought review of the bargaining committee's decision through internal union channels. A hearing was held before an appeals committee established by the International Union and that committee denied the appeal. Rather than pursue her appeal to the next step prescribed by the UAW's Constitution—submission of the dispute to the independent Public Review Board—Petitioner abandoned her internal union appeals and filed a so-called "hybrid" breach of collective bargaining agreement/breach of the duty of fair representation suit against both the Employer and the UAW.

Unlike most collective bargaining agreements negotiated by the UAW, the agreement at issue here did not contain a "reinstatement of grievances" letter requiring the parties to reactivate grievances based on decisions of the internal union appeals process. See *Clayton v. UAW*, 451 U.S. 679, 691, n.18 (1981) The labor agreement at issue does, however, provide that grievances may be reactivated by mutual agreement and that grievances shall be reactivated whenever "any agency or court decides that [the] grievance was improperly withdrawn." (Collective Bargaining Agreement, Section 14a; See also Pet. 3a)

Following dismissal of the claims against both the Employer and the UAW on statute of limitations grounds by the District Court, the Sixth Circuit held that the applicable limitations period as to the action against the UAW should be tolled for the period during which Petitioner sought relief under the UAW's appeal procedures. (Pet. 17a). The UAW has not petitioned for review. The Sixth Circuit, however, upheld the District Court's dismissal of the Employer on statute of limitations grounds and Petitioner now seeks review of that element of the Sixth Circuit's decision.[1]

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[1] The Sixth Circuit also noted that, because of the contractual provision requiring reactivation of grievances whenever a court finds the grievance to have been improperly withdrawn, the employer will remain obligated, as a contractual matter, to reactivate the grievance if Petitioner prevails in her action against the union. (Pet. 20a)

ARGUMENT

The Petition raises a question which is (a) extremely narrow and factually specific, (b) incapable of recurring with any frequency, and (c) rendered largely insignificant by the ability of Petitioner to obtain a complete remedy as a result of specific contract language at issue. For all these reasons, the UAW has not sought review of the portion of the decision adverse to the Union. For the same reasons, it is the UAW's position that review by this Court of the question presented by Petition is both unnecessary and unwarranted.

1. (a) The Petition raises the following exceedingly narrow question: when a union member pursues internal union remedies based on a reasonable but mistaken belief that such pursuit is required, is the statute of limitations tolled with respect to the companion action for contract enforcement against the employer under section 301 of the Labor Management Relations Act (LMRA), 29 U.S.C. § 185.[2]

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[2] As background, we note that employees represented by a union wishing to challenge an employer's interpretation of a collective bargaining agreement may do so by bringing a "hybrid" action consisting of an action against the employer to enforce the collective bargaining agreement pursuant to section 301 of the LMRA, and an action against the union alleging that it violated the duty of fair representation. *Vaca v. Sipes*, 386 U.S. 171, 186 (1967); *DelCostello v. Teamsters*, 462 U.S. 161, 165 (1983); *Hines v. Anchor Motor Freight*, 424 U.S. 554, 570-71 (1976). Prior to bringing such a suit, employees must, as a general matter, pursue all available remedies, both under collective bargaining agreement, *Republic Steel v. Maddox*, 379 U.S. 650 (1965), as well as those remedies available "internally" within thier union whenever such "internal" remedies are fair, prompt and capable of providing "complete relief." *Clayton v. UAW*, 451 U.S. 679 (1981). The Circuits have unanimously held that, whenever exhaustion of these remedies is required, such exhaustion will toll the statute of limitations. *See, e.g., Miller v. Jeep*, 774 F.2d 111, 113-14 (6th Cir. 1985) (mandatory "internal" union remedies); *Scottt v. Local 863*, 725 F.2d 226, 229 (3rd Cir. 1984) (same); *Galindo v. Stoody Company*, 793 F.2d 1502, 1510 n.3 (9th Cir. 1986) (collecting cases on contractual grievance procedures).

As the opinion below makes clear, this question arises only when an employee "misunderstood the nature of the possible internal [union] remedies and thought that they included reinstatement [but] this misunderstanding was caused solely by the Union's misrepresentations and cannot be linked to [the Employer's] actions, statements, or policies." (Pet. 15a) In these narrow circumstances, the court below held that the statute of limitations governing the employee's claim against the employer "should not be equitably tolled." (Pet. 20a).

While the UAW does not agree that such a "misunderstanding" does not justify application of equitable tolling principles with respect to the cause of action against an employer whose "actions, statements, or policies" cannot be "linked" to that misunderstanding, the UAW believes that the question is one that is not significant enough to be worthy of this Court's attention.

(b) The question addressed by the court below is also incapable of recurring with any frequency. Most collective bargaining agreements negotiated by the UAW contain "reinstatement of grievances" letters and the internal union procedure is therefore capable of providing complete relief. *Clayton v. UAW*, 451 U.S. 679, 691 n.18 (1981). In those situations, the question presented here is incapable of arising because, as the lower courts have unanimously held, the statute of limitations will be tolled as to both the union and employer while an employee exhausts mandatory internal union appeal procedures.[3]

(c) Finally, there is another, entirely *sui generis*, element of this case that appears to have figured prominently in the Sixth Circuit's decision. As described above, the contract here required that withdrawn grievances must be reactivated if "any agency or court decides that [the] grievance was improperly withdrawn." As the Sixth Circuit noted, the employer, as well as the union, "will be

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[3] See cases at note 2, *supra*.

bound by the collective bargaining agreement to allow the grievance to be reinstated and to continue to arbitration" if the District Court determines that the grievance was improperly withdrawn. (Pet. 20a) Allowing the statute of limitations to bar relief under Section 301 against the employer in this action will therefore not preclude Petitioner from ultimately receiving complete relief because such relief—arbitration of the underlying grievance—will be required *as a matter of contract* if the lower court determines that the union improperly withdrew the grievance.

2. In an atempt to manufacture a split in the circuits on the issue presented here, Petitioner is forced into grossly over-reading each of the cases cited in support of the purported split.

First, Petitioner fails to point out that *Fransden v. BRAC*, 782 F.2d 674 (7th Cir. 1986), was not a hybrid § 301/duty of fair representation case at all. Instead, in *Fransden* the court was dealing with a claim that the union breached the duty of fair representation in the *negotiation*—rather than the enforcement—of a labor agreement. *Cf. Air Line Pilots Association v. O'Neill*, 111 S.Ct. 1127 (1991). In that case, the employer was a necessary party—not because it engaged in the independently actionable wrong of unilaterally violating the labor agreement in the first instance—but because plaintiff there alleged that the employer "had conspired with [the union] . . . and thus . . . shared in [the union's] liability." 782 F.2d at 677. As the court noted, "while the typical [hybrid] section 301 claim against the employer could proceed separately from the claim against the union, the allegation here is merely that [the employer] is a party to [the union's] breach" *Id.* at 684. The Seventh Circuit thus did not reach the question presented here: whether, in a hybrid suit—in which the claim "against the employer could proceed separately from the claim against the union"—the tolling as to the union nec-

essarily requires similar tolling with respect to the action against the employer. As we show in the margin, Petitioner has similarly over-stated the holdings of the other cases on which he relies in his efforts to manufacture a split in the circuits.[4]

Nor are the Third Circuit cases in the "disarray" that Petitioner seeks to create. Neither of the cases cited by Petitioner from that Circuit addresses in any respect the question of tolling with respect to the employer portion of a hybrid action. *Scott v. Local 863*, 725 F.2d 226, 229 (3rd Cir. 1984) (no discussion of limitations issue with respect to employer); *Grasty v. Clothing Workers*, 828 F.2d 123, 133 (3rd. Cir. 1987) (action against unions for violation of union constitution; employer not party to suit). And, contrary to Petitioner's claim that the Third Circuit has somehow abandoned its decision in *Scott*, subsequent Third Circuit case law continues to follow both the holding and reasoning first announced there . *Lewis v. Teamsters*, 826 F.2d 1310, 1317 (3rd Cir. 1987).[5]

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[4] *Galindo v. Stoody Co.*, 793 F.2d 1502 (9th Cir. 1986), stands only for the undisputed proposition that pursuit of *contractual* grievance and arbitration procedures, as required by *Republic Steel*, will toll the limitations period applicable to hybrid suits. *Stafford v. Ford Motor Co.*, 835 F.2d 1227 (8th Cir. 1987), is not on point because the internal union procedures there were capable of providing complete relief and were therefore required to be exhausted prior to commencing the hybrid suit. That result is neither disputed nor presented here. Finally, in *Leach v. Pan American World Airways*, 842 F.2d 285 (11th Cir. 1988), the Circuit Court reversed the District Court in holding that duty of fair representation plaintiffs are not entitled to jury trial and therefore did not reach the issue presented here at all.

[5] More importantly, neither *Scott*, *Grasty* nor *Lewis* in any way involved the narrow question of equitable tolling with respect to the employer portion of a hybrid action. In fact, in both *Grasty* and *Lewis*, the action was solely against the union and the employer was not even a party.

In sum, other Courts of Appeals have never had occasion to examine the narrow question presented here: whether the equitable tolling of the statute of limitations with respect to the duty of fair representation component of a hybrid action resulting from optional pursuit of internal union appeal procedures should similarly toll the statute with respect to the contract enforcement component of that action. The lack of case law demonstrates both that no conflict is present and, more importantly, that the question presented here is not a recurring one.

CONCLUSION

For the foregoing reasons, the Petition should be denied.

Respectfully submitted,

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